

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
AUG 05 2016
Clerk, U.S. District Court
District Of Montana
Missoula

JOHNNY DEVON,

Petitioner,

vs.

MIKE BATISTA, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 16-29-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on June 1, 2016, recommending denial and dismissal of Petitioner Johnny Devon's ("Devon") application for writ of habeas corpus under 28 U.S.C. § 2254. Devon timely filed an objection and is therefore entitled to de novo review of those Findings and Recommendations to which he specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). "Clear error exists if the Court is left with a definite and firm conviction that a mistake has been committed."

United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Having reviewed Devon's "objection," the Court finds that it fails to find fault with Judge Johnston's Findings and Recommendations. Instead, Devon argues that his rights were violated by the lack of due process concerning his parole plan. Devon contends that the State should have given him more assistance in producing a suitable parole plan. (Doc. 6 at 2.)

However, under habeas review, Devon must show that "he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Devon has failed to do so. As discussed by Judge Johnston, the State provided the minimal procedural requirements under the Constitution. Devon was provided an opportunity to be heard and an explanation why his parole was rescinded. *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011) (prisoner "received adequate process when he was allowed an opportunity to be heard and was provided a statement of the reasons why parole was denied"). As such, Devon's objection will be overruled.

IT IS ORDERED that:

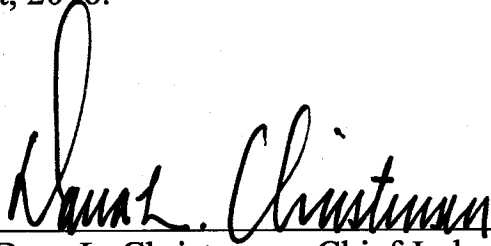
(1) Judge Johnston's Findings and Recommendations (Doc. 5) are
ADOPTED IN FULL.

(2) Devon's petition (Doc. 1) is DENIED for lack of merit.

(3) The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.

(4) A certificate of appealability is DENIED

DATED this 5th day of August, 2016.



Dana L. Christensen, Chief Judge
United States District Court